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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,808	08/19/2003	Dean Anthony Theodore		4782

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LOS ANGELES, CA 90017

EXAMINER

LARSON, JUSTIN MATTHEW

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/643,808	Applicant(s) THEODORE, DEAN ANTHONY	
	Examiner Justin M. Larson	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/19/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to because reference numeral 28 in Figure 6 should be changed to 25. 25 is referred to as the rear interior mesh pouch on page 9 of the specification. 28 is the front interior mesh pouch. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

35 USC § 112, 6th Paragraph

2. Claim 1, part (i), attempts to use a "means" clause to recite a claim element as a means for performing a specified function. However, since this language does not meet

Art Unit: 3727

analysis set forth in MPEP 2181, i.e. "means for" or "step for" is not being used, or no function is set forth, or too much structure is set forth, the Examiner assumes that applicant does not wish to invoke 35 USC § 102, paragraph 6.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,2,4,9,10,14, and 16- 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Fournier (6,193,034). Fournier discloses a sports bag comprising a rectangular base (1), a front and rear shell (2) capable of configurations as seen in Figures 2 and 3, exterior elastic nylon mesh bags (10) disposed on both front and rear exterior surfaces of the shells, interior elastic nylon mesh bags and pockets (15-18, 21-23) disposed on the interior surfaces of the shells, a carrying means comprising two handles (5), closing devices for front and rear exterior mesh bags (Col. 3 Line 60), an additional carrying means being a removable shoulder strap (Col. 3 Line 50), and a zipper (14) joining the shells.

5. Regarding claims 16-18, which claim various aspects of the bag being designed specifically for triathlon gear:

The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Fournier which is capable of being used in the intended

manner, i.e., accommodating triathlon gear. There is no structure in Fournier that would prohibit such functional intended use (see MPEP 2111).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fournier in view of Smith (5,567,055). Fournier discloses the claimed invention except for additional pockets disposed on the interior of the mesh bag/pocket located on the exterior of the front shell. Smith, however, teaches, "it is often desirable to attach smaller containers or interior walls to the interior surfaces of the bag" (Col. 1 Line 56). Therefor, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fournier by adding interior pockets to the larger exterior pocket/bag as taught by Smith in order to conveniently organize the interior of the bag/pocket or separate equipment as needed.

8. Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fournier in view of Baronian (5,893,504). Fournier discloses the claimed invention except for additional mesh pouches disposed on the exterior of the mesh bags/pockets located on the interior of the front and rear shell. Baronian, however, teaches a mesh pocket being located on the exterior of another pocket for separating items (Col. 3 Line 45). Therefor, it would have been obvious to one of ordinary skill in the art at the time

Art Unit: 3727

the invention was made to modify Fournier by adding mesh pockets to the exterior of the interior pockets/bags as taught by Baronian in order to conveniently organize the interior of the sports bag or separate equipment as needed.

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fournier in view of Amram (6,460,746) and further in view of Shields (5,507,422). Fournier discloses the claimed invention except for the removable padded straps. Amram teaches that removable and repositionable straps "reduce muscle strain when the bag is carried by improving the balance of the load" (Abstract). Shields teaches a pad for use with a shoulder strap to reduce the user's discomfort (Abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fournier by adding removable and repositionable straps, as taught by Amram, and further adding pads to those straps, as taught by Shields, in order to improve the user's comfort and make a more ergonomic sports bag.

10. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fournier in view of Lowe (4,648,121). Fournier discloses the claimed invention except he fails to specify the material of the shells as being nylon or urethane. Lowe however, teaches that better quality backpacks are typically made of nylon or polyester cloth coated on one side with a urethane material to resist water penetration (Col. 1 Line 27). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fournier by constructing the shells out of nylon, urethane, or a combination thereof, as taught by Lowe, in order to create a sports bag that was sturdy, waterproof, or both, effectively increasing the sports bag's overall utility.

Art Unit: 3727

11. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fournier in view of Jackson (6,186,662). Fournier discloses the claimed invention except that he claims a rigid hanger loop (12) rather than a nylon loop. Jackson, however, teaches a bag comprising two hanging loops (16 and 20), "made of a fairly inelastic material... cloth, nylon, canvas or a canvas type material" (Col. 5 Line 1). Therefor, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fournier by replacing the rigid hanger loop with a nylon hanging loop so that the rigid loop didn't get snared on a user's clothing or other foreign object or scrape or scratch the user when the bag was not hung up and was being used.

Conclusion

Lowe, Gerch, Shields, Smith, Wadden, Baronian, Kearl, Fournier, Jackson, Nakano, Amram, and Godshaw are cited to related bags.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on M-Th 6-4:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Art Unit: 3727

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NATHAN J. NEWHOUSE
PRIMARY EXAMINER